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Application Number: 09/396,531

Group Art Unit: 3711

Filing Date: 9/15/99

Examiner Name: William Pierce

Inventors: Randall Addington et al.

Attorney Docket No.: 99-1001

Title: Bowler's Aid

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

37 C. F. R. 1.181 Petition

I.

This Petition Is Timely Filed

1. This Petition is for relief from the decision of examiner, mailed 1/26/2005.

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II.

Summary of Petition Statement and Relief Requested

2. Summary of Facts and Relief Requested

A. Summary

Examiner, issued a Second Final Action, 01-26-2005, over a year and a half after the First Final Action, 6-26-2003. The 01-26-2005 Final Action (Second Final Action)

1. unlawfully moved the prosecution back in time to 06-18-2003, by reissuing the Office action 06-1-26-2003 (First Final Action), as the new current substantive office action, contrary to the Decision on Petition 10-2-2003. The Decision on Petition 10-2-2003, gave applicants the option and right to advance their appeal, on the record at that time, inclusive of the First Final Action, the Amendment After Final, and Advisory Action; and

2. unlawfully removed from the record and from applicants' pending appeal, the Amendment After Final Rejection 06-25-2003, Advisory Action 07-15-2003, Notice of Appeal 09-17-2003, and Appeal Brief 10-24-2003 and Appeal Brief Supplement 10-27-2003.

3. Examiner's asserted grounds for going back in time, and restarting prosecution on the basis of the 6-18-2003 Office action has no justification in the record or by law. The Decision on Petition, dated 10-2-2003, is limited to expunging examiners' defamatory remarks against applicants and applicants' counsel, and reissuing the

Final Action with the same substantive content. The Decision on Petition, dated 10-2-2003 gave applicants' the option to pursue their appeal, started by the Notice of Appeal 9-16-2003. Applicants' response to the Decision on Petition, dated 10-2-2003 , was their Appeal Brief 10-24-2003 and Supplement 10-27-2003.

#### B. Relief Requested

Examiner unlawfully has exceeded the authority in the Decision on Petition 10-2-2003, and any authority or right in law, by Office action 01-26-2003, asan unjustified malicious and vindictive attempt to remake the prosecution history.

Applicants petition asks for,

1. the removal of the Office action 1-26-2005;
2. ordering the prosecution of this application to immediately proceed with examiner's answer to applicants' pending appeal brief;
3. removal of this application from Tech Center 3700. Grounds for removal are this Final Action 1-26-2005, was signed by a Supervisory Primary Examiner, in Tech Center 3700, demonstrating approval of the Office action 1-26-2005, at the Tech Center 3700 management level. The only way to assure a fair and lawful prosecution of applicants' appeal, is to remove this application from influence of Tech Center 3700 management; and
4. Inspector General supervision of prosecution to assure the application is examined in a lawful manner.

### III.

Facts of the Proceedings in Application 09/396,531, filed 9-15-1999 (docket 99-1001).

A. The PAIR website shows, *inter alia* ,

- a. 01-26-2005 Mail Final Rejection (PTOL - 326)
- b. The PAIR record up to the 01-26-2005 Final Rejection, as excerpted below, shows the Appeal Brief filed 10-24-2003 and 10-27-2003, was forwarded to the examiner on 11-18-2004, over two months previous to the Final Rejection 01-24-2005.
- c. 11-18-2004 Date (Appeal Brief) Forwarded to Examiner.
- d. 10-27-2003 Supplemental Appeal Brief.
- e. 10-24-2003 Appeal Brief Filed.
- f. 09-17-2003 Notice of Appeal Filed .

## B. Examiner Final Action

Examiner's grounds for the new Final Action mailed 01-26-2005, are stated as,

This Final Action replaces the action set forth on the 06/18/03 which has been expunged in favor of this new action are (sic) in the Decision on Petition dated 10/2/03 paper No. 39. Applicant's petition filed 6/26/03, paper No. 38, necessitated this new Office action and his subsequent petition filed 10/08/03, paper No. 41 made this file unavailable to the examiner of record delaying this action. As such, applicant's Appeal Brief filed 10/24/03 has been withdrawn and the application stand (sic) finally rejected as follows.

### III.

#### Unlawfulness of Examiner's Final Rejection 01-26-2005

1. Examiner's reliance on the Decision on Petition dated 10/2/03 paper No. 39, is not justified by fact or law.

The Decision on Petition 10-2-2004, states, *interalia*,

The Office letter dated June 18, 2003 will be vacated and expunged . . . and the action will be physically removed from the file.

A new Office action containing the substantive matters set forth in the June 18, 2003, but omitting any personal comments . . . will be promulgated.

The Notice of Appeal filed on September 17, 2003, will be entered. Counsel will have the option of filing a reply to the new Office letter, or pursuing the appeal.

(Underlining Added)

2. Applicants' response to the option given in the Decision on Petition 10-2-2004, was to pursue their appeal by filing an appeal brief on 10-24-2003 and a Supplemental Submission to the Appeal Brief, with the Appendix of Claims, 10-27-2003.

3. Upon filing the Appeal Brief 10-24-2003, applicant's showed their clear intention to pursue their appeal, as their option, given in the Decision on Petition 10-2-2004.

4. Applicants diligently pursued prosecution of their appeal, asking for the Commissioner's intervention and investigation by the Inspector General, on three separate occasions. Separate replies were received from Mr. James Groody, Executive Assistant, Office of the Commissioner for Patents, in letters mailed July 26, 2004, August 13, 2004 and November 23, 2004.

5. Mr. Groody's letters of July 26 and August 13, 2004, advised a Decision on Petition was mailed July 26, 2004 and the application will be forwarded to the Technology Center for processing.

6. Mr. Groody's letter of November 23, 2004, advised, *inter alia*,

The Director of Technology Center 3700, Ethel Rollins-Cross, has reviewed the application file and ascertained that the [Notice of Appeal filed 9-16-2003, Appeal Brief, filed 10-24-2003, and a supplemental submission comprising an Appendix of Claims filed 10-27-29003] were present in the file. The application has been forwarded to the examiner for preparation of an Examiner's Answer to the Appeal Brief. You should expect to receive a communication in the next two months.

(Underlining added)

7. Examiner's unlawfulness is demonstrated by,

- a. Examiner's issuance of a new Final Rejection, substantively the same as the Final Rejection of 06-18-2003, placing the application back in time to 06-18-2003, prior to, and de facto cancelling and removing from the prosecution history, the Advisory Action (PTOL-303) 07-15-2003, applicants' Amendment after Final Rejection 06-25-2003, and the Notice of Appeal, Appeal Brief, and Supplement, filed 09-16-2003, 10-24-2003, and 1-27-2003;
- b. Examiner's refusal to respond by Answer to applicants Appeal Brief;
- c. Examiner's transparent attempt to hide examiner's failure to timely issue a Final Rejection, as directed in the Decision on Petition 10-2-2003, and take advantage of that failure to unjustifiably alter the prosecution record by effectively stripping from the file history, the Amendment After Final, Examiner's Advisory Action and Appeal Brief.

#### IV.

#### Relief Requested

Petitioners request,

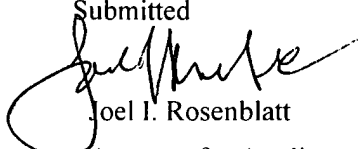
in the Decision on Petition 10-2-2003, and take advantage of that failure to unjustifiably alter the prosecution record by effectively stripping from the file history, the Amendment After Final, Examiner's Advisory Action and Appeal Brief.

IV.

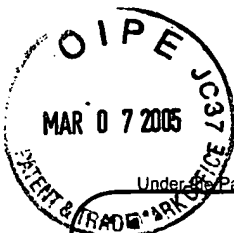
Relief Requested

Petitioners request,

- a. the Final Office Action 01-26-2003, be cancelled and the Appeal Brief be immediately sent to examiner for immediate completion of an Answer and completion of the appeal process; and
- b. Inspector General intervention, in view of the record, as the only adequate way to assure the application proceed in a lawful manner. This Final Action 10-26-2005, signed by a Supervisory Primary Examiner, in Tech Center 3700, is probative of management's influence or direction in the unlawful Office Action 1-26-2005. The only way to remove that management influence and to assure a fair and lawful prosecution of applicants' appeal, is to remove this application from Tech Center 3700.
- c. Refund of the Petition Fee. This petition is to reverse the unlawful act of examiner and correct the action of the U.S. Patent Office, and return of the fee is proper and justified.

Submitted  
  
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03-03-2005



PTO/SB/21 (09-04)

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Total Number of Pages in This Submission

7

Application Number

09/396,531

Filing Date

9-15-1999

First Named Inventor

Randall Addington

Art Unit

3711

Examiner Name

William Pierce

Attorney Docket Number

99-1001

**ENCLOSURES (Check all that apply)**☐

Fee Transmittal Form

☐

Fee Attached

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Amendment/Reply

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After Final

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Affidavits/declaration(s)

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Extension of Time Request

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Certified Copy of Priority Document(s)

☐Reply to Missing Parts/  
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